

AMENDED IN ASSEMBLY AUGUST 23, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

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AMENDED IN SENATE MAY 10, 2011

SENATE BILL

No. 550

Introduced by Senator Padilla

(Coauthors: Senators Liu, Pavley, and Price)

(Coauthors: Assembly Members Blumenfield, Butler, *Fuentes*, Gatto, Hagman, and Smyth)

February 17, 2011

An act to amend Sections 21800, 21804, 21805, and 21806 of, to add Section 21807 to, and to repeal and add Sections 21801, 21802, and 21803 of, the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 550, as amended, Padilla. Business: manufactured optical disc.

Existing law requires every person who manufactures an optical disc, as defined, for commercial purposes to permanently mark the manufactured optical disc with an identification mark or a unique identifying code, as specified. Existing law sets forth various definitions for purposes of these provisions. Existing law makes a manufacturer that violates these provisions guilty of a crime punishable by specified fines. Existing law also makes a person that engages in specified prohibited acts in violation of these provisions guilty of a crime punishable by specified fines or imprisonment.

This bill would recast the definitions applicable to these provisions. The bill would prohibit a person who manufactures optical discs for commercial purposes from possessing, owning, controlling, or operating

manufacturing equipment or any optical disc mold unless it has been adapted to apply the appropriate identification mark or unique identifying code. The bill would prohibit a person who manufactures optical discs for commercial purposes from making, possessing, or adapting any optical disc mold for the purpose of applying a forged, false, or deceptive identification mark or identifying code. The bill would authorize law enforcement officers to perform inspections, as specified, at commercial optical disc manufacturing facilities during regular business hours without a warrant for the purpose of verifying compliance with these provisions and would authorize law enforcement officers, in performing these investigations, to seize any optical disc or production part manufactured in violation of these provisions. The bill would require a person manufacturing optical discs for commercial purposes to maintain specified records. The bill would also increase the fines applicable to a manufacturer or person that violates the provisions regulating manufactured optical discs.

Because a violation of the bill's provisions by a person who manufactures optical discs would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21800 of the Business and Professions
2 Code is amended to read:
3 21800. (a) Every person who manufactures an optical disc for
4 commercial purposes shall permanently mark each manufactured
5 optical disc with an identification mark that identifies the name of
6 the manufacturer and the state in which the optical disc was
7 manufactured or, alternatively, a unique identifying code that will
8 allow law enforcement personnel to determine the name of the
9 manufacturer and the state in which the optical disc was
10 manufactured.

(b) The identification mark required by this section shall be affixed by molding, diestamping, etching, or other permanent method in a manner in which ~~it~~ *the identification mark* is clearly visible without the aid of magnification or special devices to read the mark.

SEC. 2. Section 21801 of the Business and Professions Code is repealed.

SEC. 3. Section 21801 is added to the Business and Professions Code, to read:

21801. (a) No person who manufactures optical discs for commercial purposes shall (1) possess, own, control, or operate manufacturing equipment or any optical disc mold unless it has been adapted to apply the appropriate identification mark or unique identifying code in accordance with this chapter, or (2) make, possess, or adapt any optical disc mold for the purpose of applying to an optical disc a forged or false identification mark or identifying code, or any mark so similar to a manufacturer's identification mark or identifying code as to be likely to deceive.

(b) Any manufacturing equipment, optical disc mold, or production part found on the premises of a commercial manufacturer shall for the purposes of this chapter be deemed to be in the possession of the manufacturer.

SEC. 4. Section 21802 of the Business and Professions Code is repealed.

SEC. 5. Section 21802 is added to the Business and Professions Code, to read:

21802. For purposes of this chapter, the following terms shall have the following meanings:

(a) "Commercial purposes" means the manufacture of at least 10 of the same or different optical discs in a 180-day period by storing information on the disc for the purposes of resale by that person or others.

(b) "Manufacturer" means a person who replicates the physical optical disc or produces the master used in any optical disc replication process. It does not include a person who manufactures optical discs for internal use, testing, or review, or a person who manufactures blank optical discs.

(c) "Manufacturing equipment" means any machine, equipment, or device, including mastering equipment, used for the manufacture of optical discs or production parts in accordance with this chapter.

1 (d) “Mastering equipment” means any machine, equipment, or
2 device used for the mastering of optical discs or production parts
3 consisting of a signal processor and laser beam recorder or any
4 other recorder, used to record data onto the glass or polymer master
5 disc from which production parts are produced, or to record data
6 directly onto a production part.

7 (e) “Optical disc” means a disc capable of being read by a laser
8 or other light source on which data is stored in digital form. It
9 includes, but is not limited to, discs known as CDs, DVDs, or
10 related mastering source materials. It does not include blank optical
11 discs.

12 (f) “Production part” means the item usually referred to as a
13 stamper that embodies data in a digital form and is capable of being
14 used to mold optical discs, and includes any other item, usually
15 referred to as a master, father or mother, embodying data from
16 which a stamper may be produced by means of an electroplating
17 process.

18 (g) “Professional organization” means an organization whose
19 membership consists wholly or substantially of intellectual property
20 rights owners, and which is mandated by those members to enforce
21 their rights against counterfeiting and piracy.

22 SEC. 6. Section 21803 of the Business and Professions Code
23 is repealed.

24 SEC. 7. Section 21803 is added to the Business and Professions
25 Code, to read:

26 21803. (a) Law enforcement officers are authorized to perform
27 inspections at commercial optical disc manufacturing facilities to
28 verify compliance with the provisions of this chapter. Any
29 inspection shall be conducted by officers whose primary
30 responsibilities include investigation of high-technology crime or
31 intellectual property piracy. Inspections shall take place during
32 regular business hours and shall be limited to the areas of the
33 premises where manufacturing equipment is located and where
34 optical discs and production parts are manufactured and stored.
35 The scope of the inspection shall be restricted to the physical
36 review of items and collection of information necessary to verify
37 compliance with the provisions of this chapter. Officers performing
38 inspections may do so without providing prior notice or obtaining
39 a warrant, and shall have the authority to do all of the following:

1 (1) Take an inventory of all manufacturing equipment, including
2 the identification mark or unique identifying code that any piece
3 of equipment has been modified to apply.

4 (2) Review any optical disc, manufacturing equipment, optical
5 disc mold, or production part.

6 (3) Review any record, book, or document maintained under
7 Section 21807, kept in any format, electronic or otherwise, relating
8 to the business concerned.

9 (4) Inspect, remove, and detain for the purpose of examination
10 for as long as reasonably necessary any optical disc, production
11 part, or record, book, or document maintained under Section 21807.

12 (5) Seize any optical disc or production part manufactured in
13 violation of this chapter.

14 (6) Obtain and remove four samples each of the optical discs
15 molded by each mold that has been used or could be used to
16 manufacture optical discs.

17 (b) No person shall evade, obstruct, or refuse any inspection
18 requested or being carried out by a law enforcement officer to
19 determine compliance with this chapter. The manufacturer, and
20 the employees, servants, or agents of the manufacturer, shall
21 cooperate during the course of the inspection by promptly doing
22 all of the following:

23 (1) Providing and explaining any record, book, or document
24 required to be maintained pursuant to Section 21807.

25 (2) Pointing out and providing access to all optical discs,
26 manufacturing equipment, optical disc molds, and production parts
27 and demonstrating to the satisfaction of the officer that they include
28 or have been adapted to apply the required identification mark or
29 unique identifying code.

30 (3) Providing and permanently surrendering four samples each
31 of the optical discs molded by each mold that has been used or
32 could be used to manufacture optical discs.

33 SEC. 8. Section 21804 of the Business and Professions Code
34 is amended to read:

35 21804. Except as otherwise provided in this chapter, any
36 manufacturer of optical discs who violates this chapter is guilty
37 of a misdemeanor, and shall be subject to a fine of not less than
38 five hundred dollars (\$500) and not more than twenty-five thousand
39 dollars (\$25,000) for a first offense, and shall be subject to a fine
40 of not less than five thousand dollars (\$5,000) nor more than two

1 hundred fifty thousand dollars (\$250,000) for a second or
2 subsequent offense.

3 SEC. 9. Section 21805 of the Business and Professions Code
4 is amended to read:

5 21805. Any person who buys, sells, receives, transfers, or
6 possesses for purposes of sale or rental an optical disc knowing
7 that the identification mark required by this chapter has been
8 removed, defaced, covered, altered, or destroyed, or knowing it
9 was manufactured in California without the required identification
10 mark, or knowing it was manufactured in California with a false
11 identification mark is guilty of a misdemeanor punishable by
12 imprisonment in a county jail for a term not exceeding one year,
13 or by a fine of not more than ten thousand dollars (\$10,000), or
14 by both the fine and imprisonment.

15 SEC. 10. Section 21806 of the Business and Professions Code
16 is amended to read:

17 21806. Any person who knowingly removes, defaces, covers,
18 alters, or destroys the identification mark required by this chapter
19 is guilty of a misdemeanor punishable by imprisonment in a county
20 jail for a term not exceeding one year, or by a fine of not more
21 than ten thousand dollars (\$10,000), or by both the fine and
22 imprisonment.

23 SEC. 11. Section 21807 is added to the Business and
24 Professions Code, to read:

25 21807. (a) Every person who manufactures optical discs for
26 commercial purposes shall keep full and accurate records of its
27 manufacturing equipment, and shall make them available to law
28 enforcement for inspection pursuant to this chapter. The records
29 shall include a current inventory of manufacturing equipment, and
30 every purchase, lease, sale, disposal, or other transaction relating
31 to any manufacturing equipment, specifying the make, model, and
32 serial number of the equipment, the identification mark or unique
33 identifying code which the equipment has been adapted to apply,
34 the date and nature of each transaction, and the full name and
35 address of the party with whom the transaction was entered into.

36 (b) Every person who manufactures optical discs for commercial
37 purposes shall keep all of the following, for a period of not less
38 than five years from the date of production:

39 (1) One sample of each optical disc title manufactured by it.

1 (2) One copy in a retrievable form of the content of each
2 production part manufactured by it.

3 (3) The name and physical address of the customer, or if the
4 order was placed by an intermediary, the name and physical address
5 of the actual customer who originated the order.

6 SEC. 12. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.